IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 17TH DECEMBER 2007 / 26TH AGRAHAYANA 1929

WP(C).No. 37206 of 2007(D)

PETITIONER:

DAMODARAN VIJAYAN,W/O. DAMODARAN
AGED 56 YEARS, DAMODARAVILASOM BANGLOW
KODANGAVILA, VENPAKAL DESOM,
ADIYANNOOR VILLAGE, NEYYATTINKARA.

BY ADV. SRI.D.SAJEEV.

RESPONDENT:

SUBHASHITAN, S/O.KUTTAN PANICKER
AGED ABOUT 55, PALLIMELATHIL VEEDU
VENPAKAL DESOM, ADIYANNOOR VILLAGE,
NEYYATTINKARA.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17/12/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

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W.P.(C) No.37206 OF 2007

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Dated this the 17th day of December 2007

JUDGMENT

This writ petition is filed against the order of the Prl.Munsiff's Court, Neyyattinkara in I.A.No.6675 of 2007 in O.S.No.514 of 2005. The defendant is the petitioner therein. Along with the suit, an application was filed. A Commissioner had been appointed and he has submitted a detailed report. The defendant has filed a counter claim claiming declaration of easement by prescription. The court below found that the matters sought to be looked into had not been reported by the previous Commissioner and the court, for the delay caused had imposed cost on the defendant. The counter claim is in the form of a cross suit where a relief of declaration with respect to prescription is claimed. It is a right which really interferes with the enjoyment of the owner of the property. So, there must be specific directions in a suit where the relief sought for is easement by prescription. The court below was satisfied that those materials are necessary.

Therefore this is not a fit case where the powers under Article 227 of the Constitution of India has to be invoked and therefore I decline

jurisdiction and the writ petition is dismissed.

M.N.KRISHNAN, JUDGE

Cdp/-